

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CENTRO PRESENTE, a membership organization,
et al.,

Plaintiffs,

V.

DONALD J. TRUMP, President of the United States, in his official capacity, *et al.*,

Defendants.

No. 1:18-cv-10340-DJC

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF
DOCUMENTS IMPROPERLY WITHHELD AS PRIVILEGED**

Pursuant to Fed. R. Civ. P. 37(a)(3)(B), Plaintiffs Centro Presente, *et al.* (the “Plaintiffs”) respectfully move this Court for an order compelling the Defendants—United States Department of Homeland Security (“DHS”), Donald J. Trump, President of the United States in his official capacity (“President Trump”), DHS Secretary Kirstjen Nielsen (“Secretary Nielsen”), and DHS Deputy Secretary Elaine Costanzo Duke (“Deputy Secretary Duke,” and together with DHS, President Trump, and Secretary Nielsen, the “Defendants”)—to produce the documents listed on Exhibit A to this motion, which have been improperly withheld on the ground of privilege.

This Motion is supported by Plaintiffs’ Memorandum of Law and the Declaration of Leah Milbauer, filed contemporaneously herewith. As set forth more fully in the Memorandum and Declaration, Defendants have improperly withheld thousands of documents based on improper assertions of the deliberative process privilege, the attorney-client privilege, and the law enforcement privilege. Defendants have made similar assertions of privilege in parallel litigations involving Temporary Protected Status (“TPS”) designations. The courts in those

cases ruled that various documents that had been withheld directly supported the TPS plaintiffs' claims.

The parties have conferred extensively regarding these issues as noted in the parties' joint status reports, but have not resolved their disagreement. Plaintiffs request that the Defendants be compelled to produce the documents promptly, so that Plaintiffs will be able to prepare for depositions and for trial. If and when the stay ends in this action, there will be a limited period of time within which Plaintiffs must bring the case to resolution on the merits before the TPS protections end for thousands of people.

The Defendants' current privilege log lists 8,749 entries. Defendants are withholding these 8,749 documents on the grounds of privilege. Plaintiffs challenge a subset of these assertions of privilege. In the attached Exhibit A, Plaintiffs have reproduced verbatim the privilege log entries that Plaintiffs are challenging. Plaintiffs contend that the documents listed on Exhibit A should be produced.

WHEREFORE, Plaintiffs request that the Court order Defendants, within fourteen days of the resolution of this Motion, to produce the documents identified in Exhibit A to Plaintiffs' Motion, or, alternatively, to order that a representative sample of documents be submitted for *in camera* review and evaluation by the Court.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Plaintiffs respectfully request that this Court schedule a hearing on this Motion by telephone or by video conference.

Dated: May 5, 2020

Respectfully submitted,

CENTRO PRESENTE, *et al.*

/s/ Leah R. Milbauer

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 37.1

I, Leah R. Milbauer, counsel for plaintiffs Centro Presente, *et al.*, certify that the parties convened in good faith to discuss the foregoing discovery disputes, as set forth in paragraphs nine through fourteen of the accompanying Declaration of Leah R. Milbauer in Support of Plaintiffs' Motion to Compel Production of Documents Improperly Withheld as Privileged. Defendants have not assented to this motion.

Dated: May 5, 2020

/s/ Leah R. Milbauer

Leah R. Milbauer (BBO# 703717)

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: May 5, 2020

/s/ Leah R. Milbauer

Leah R. Milbauer (BBO# 703717)